

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

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JONATHAN A. BLOOM,

Plaintiff,

v.

Civil No. 5:16-cv-121

ALEX AZAR,  
Secretary of the U.S. Department of Health  
and Human Services,

Defendant.

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**JOINT MOTION TO STAY**

Dr. Bloom and the Secretary (collectively, “the parties”) jointly move the Court for an Order staying further briefing and proceedings until thirty (30) days after the Second Circuit’s decision on the appealed jurisdictional issue. A stay at this time is in the interest of judicial economy and overall efficiency in this case. The time to file supplemental memoranda will resume running two business days after the date that the Second Circuit issues the mandate.

In its decision of January 29, 2018, the Court dismissed two of Dr. Bloom’s claims on the grounds of lack of jurisdiction while at the same time ruling for Dr. Bloom on the third and final claim. Dr. Bloom filed a motion for fees and costs under the Equal Access to Justice Act, (“EAJA”), 28 U.S.C. 2412, on March 1, 2018. Dr. Bloom subsequently filed a motion to alter or amend the decision dismissing the claims and this Court denied that motion on May, 15, 2018. On August 13, 2018, Dr. Bloom appealed the dismissal.

On January 16, 2019, the Court issued an opinion finding that Dr. Bloom was entitled to fees under EAJA. However, the Court stopped short of deciding the amount of the fees and ordered further briefing on the amount and reasonableness of the fees claimed. In particular, the

Court held that the degree of success is a “crucial” factor in determining the amount of fees that should be awarded under EAJA, noted that some of Dr. Bloom’s claims had been dismissed, and also noted that the amount of fees was the subject of dispute. The Court’s Order gave the Secretary fourteen (14) days to file additional briefing on the reasonableness and amount of fees and gave Dr. Bloom the opportunity to respond fourteen (14) days thereafter.

That same day, the Court granted the Secretary’s unopposed motion to stay all deadlines and authorized extension of the deadlines commensurate with the lapse in appropriations. The lapse in appropriations that began at midnight on December 21, 2018 ended in the evening hours of January 25, 2019 with a continuing resolution funding the Department of Justice through February 15, 2019. The Secretary filed a Notice, requested the lifting of the stay, and confirmed the due-date for the Secretary’s supplemental memorandum as February 8, 2019.

The parties believe that a stay would be appropriate so that, ultimately, if necessary, a single round of briefing can resolve the fees issue. Specifically, if the amount of fees is decided now (with one degree of success) and the Second Circuit decides in Dr. Bloom’s favor on the jurisdiction issue (thus, changing the degree of success), then the amount of fees would have to be revisited. As a result, the parties would have to prepare two rounds of briefs and the Court would have to address the issue twice.

Alternatively, if briefing and proceedings are stayed until after the Second Circuit decides, then the parties can brief the issues knowing the degree of success and the Court will only have to visit this issue a single time. Further, the parties continue to amicably discuss the issues and it is possible that agreement as to fees may be reached after the Second Circuit decides, thereby obviating further action by this Court.

Accordingly, the parties jointly request a stay of the supplemental briefing and any further decision on the EAJA petition so that the Secretary's briefing is not due until thirty (30) days after the Second Circuit's decision on the appeal, with any responsive briefing from Dr. Bloom due fourteen (14) days thereafter. The time to file supplemental memoranda will resume running two business days after the date that the Second Circuit issues the mandate.

Date: January 31, 2019

Respectfully submitted,

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Date: January 31, 2019

Respectfully submitted,

ALEX AZAR, Secretary  
U.S. Department of Health and Human  
Services

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